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HOUSE MEMORIAL 128

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

James Roger Madalena

A MEMORIAL

REQUESTING THE PRESIDENT AND CONGRESS TO RESTORE AMERICAN
INDIAN RELIGIOUS PROTECTIONS.

WHEREAS, the state of New Mexico recognizes and respects
the sovereign authority of federally recognized Native American
nations, tribes and pueblos, which recognition is expressly
stated in Executive Order 2005-003, entitled "Adoption of
Statewide Tribal Consultation Policy on the Protection of
Sacred Places and Repatriation" and dated February 1, 2005; and

WHEREAS, the Cultural Properties Protection Act seeks to
ensure that cultural property under the jurisdiction of the
state is identified and is not inadvertently damaged or
destroyed and that cultural property belonging to the state is
preserved and protected; and

WHEREAS, Native American nations, tribes and pueblos

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1 within the state of New Mexico are actively concerned and
2 involved with the protection of Native American sacred places;
3 and

4 WHEREAS, Native American cultural and religious values,
5 beliefs and practices are intimately and spiritually linked to
6 the land and the natural world; and

7 WHEREAS, past federal policies and actions have resulted
8 in the desecration, damage and destruction of Native American
9 sacred places and sites, many of which remain threatened and
10 endangered today; and

11 WHEREAS, congress enacted the American Indian Religious
12 Freedom Act expressly "to protect and preserve for American
13 Indians their inherent right of freedom to believe, express,
14 and exercise the traditional religions of the American Indian
15 ... including but not limited to access to sites, use and
16 possession of sacred objects, and the freedom to worship
17 through ceremonials and traditional rights"; and

18 WHEREAS, in *Lyng v. Northwest Indian Cemetery Protective*
19 *Association*, 485 U.S. 439 (1988), the United States Supreme
20 Court effectively vitiated the American Indian Religious
21 Freedom Act as an enforceable law to protect Native American
22 sacred sites by shutting the door on free exercise challenges,
23 pursuant to the first amendment to the United States
24 constitution, to governmental projects desecrating, interfering
25 with and even destroying such landscapes and sites; and

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1 WHEREAS, other federal laws and programs, such as
2 President Clinton's Executive Order 13007, entitled "Indian
3 Sacred Sites", do not specifically focus on the protection of
4 sacred landscapes and do not confer any specific judicially
5 enforceable cause of action to protect Native American sacred
6 sites and places;

7 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
8 REPRESENTATIVES OF THE STATE OF NEW MEXICO that President
9 Barack Obama be requested to commence immediate steps to
10 address longstanding Native American sacred-site issues on a
11 national basis, including establishing a specific and
12 enforceable cause-of-action provision within the American
13 Indian Religious Freedom Act of 1978 and providing equitable
14 funding to support Native American sacred-site resource
15 protection programs; and

16 BE IT FURTHER RESOLVED that any federal legislation or
17 other initiative regarding Native American sacred-site
18 protection must include meaningful consultation and
19 collaboration with tribal officials, participation by
20 appropriate organizations and groups and the utmost respect for
21 the confidential nature of sacred-site information; and

22 BE IT FURTHER RESOLVED that copies of this memorial be
23 transmitted to the president of the United States; the
24 secretary of the interior; the assistant secretary of the
25 interior for Indian affairs; the president of the Navajo

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1 Nation; the speaker of the Navajo Nation council; the president
2 of the Mescalero Apache Tribe; the president of the Jicarilla
3 Apache Nation; the chair of the Ute Mountain Ute Tribe; the
4 governors of the nineteen Indian pueblos in New Mexico; the
5 members of the New Mexico congressional delegation; the
6 governor; the secretary of Indian affairs; the chair of the
7 national congress of American Indians; and the chair of the all
8 Indian pueblo council.

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